



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 17, 2019

Jill Wolfe, Esquire  
Appeals Officer  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225  
VIA email [jiwolfe@pa.gov](mailto:jiwolfe@pa.gov)

Re: Appeal No. 2019-1796

Dear Appeals Officer Wolfe,

Thank you for contacting the Office of the Governor (Office) to notify us of the appeal filed in this matter, which your office docketed at number 2019-1796 under the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL).

Taylor Amarel (Requester) filed a request with the Office's Agency Open Records Officer (AORO) on or about August 23, 2019. Therein, Requester sought records as set forth in his appeal documentation.

This Office informed Requester that it would require an extension of time, until no later than September 30, 2019, to review the request. The Office subsequently denied the request because the responsive records would reveal the internal, predecisional deliberations of officials or employees. Further, records or portions of records would reveal personal identification information such as personal email addresses, telephone numbers or similar personal identifying information. 65 P.S. § 67.708(b)(6), (b)(10).

Here, the Office withheld six emails that reflect attorney-client communications, attorney work product and internal predecisional deliberations of the agency. These records are synopses of pending agency matters provided to the Governor by the Office of the Governor's executive staff. These emails contain discussions and analysis of issues pending before the Office and agencies, and reflect observations and options for formulating strategies and responses. These emails are circulated in advance of or while the agencies execute various policies or courses of action.

Generally, "a record that reflects the internal, predecisional deliberations of an agency, its . . . employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations" is exempt from disclosure. 65 P.S. § 67.708(b)(10)(i)(A).

Specifically, exempt records are those that reflect (1) deliberations "internal" to the agency [or among agencies]; (2) deliberations that are predecisional, i.e., before a decision on an action; and (3) content that is deliberative in character, i.e., pertaining to a proposed action

and/or policy-making. *Carey v. Department of Corrections*, 61 A.3d 367, 370 (Pa. Cmwlth. 2013).

Here, the withheld or redacted records have been maintained by and only shared within the Office. The records set forth information that informs and details the Office's decision-making, and includes recommendations and options about policies for the Governor's consideration. Accordingly, the withheld communications are exempt from access under the RTKL.

In addition, communications between officials of the Office and their counsel are protected by the attorney-client and attorney work product privileges. In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. See *Nationwide Mut. Ins. Co. v. Fleming*, 924 A.2d 1259, 1263-64 (Pa. Super. Ct. 2007). Similarly, the work-product privilege protects from disclosure "the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories." Pa.R.C.P. 4003.3; *Gillard v. AIG Ins. Co.*, 15 A.3d 44 (Pa. 2011).

Here, the Office will establish that certain items as identified therein consist of material that was communicated between counsel and client for the purpose of securing or providing legal advice, that such communications were solely between the counsel and client(s), and that such privilege has not been waived. Further, certain items reflect the mental impressions, analysis and conclusions of counsel to the Office or its agencies, particularly in matters then involved in litigation. Such records are protected by the attorney work-product privilege.

In addition, as records exempt from access or subject to privilege, the requested records are not subject to redaction, as they are not "public records" under the RTKL. See, *Commonwealth v. Simpson*, 151 A.3d 678 (Pa. Cmwlth. Ct. 2016).

Finally, if the OOR were to reverse any portion of the Office's response, direct email addresses of individuals, along with their telephone numbers or similar personal information should be redacted. 65 P.S. § 708(b)(6). It is well established that direct email addresses are "personal" to individuals identified thereby, and such addresses are exempt from access under 65 P.S. § 67.708(b)(6). *Office of the Lieutenant Governor v. Mohn*, 67 A.3d 123, 133-134 (Pa. Cmwlth. Ct. 2013).

For these reasons, the Office respectfully requests that the Requester's appeal be Denied and Dismissed.

Thank you for consideration of this matter.

Respectfully,

/s/Thomas P. Howell

Thomas P. Howell

Deputy General Counsel

Cc: Taylor Amarel